

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

INDIANA RECYCLING & RENEWABLE)
FUELS, LLC d/b/a ILLINOIS RECYCLING &)
RENEWABLE FUELS,)

Plaintiff,)

v.)

Case No. 2:16-cv-272

EARTH MANAGEMENT SERVICES OF)
ILLINOIS, INC.; CHICAGO HEIGHTS LAND)
MANAGEMENT, INC.; and ROBERT FOX,)

Defendants.)

COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff, INDIANA RECYCLING & RENEWABLE FUELS, LLC d/b/A ILLINOIS RECYCLING & RENEWABLE FUELS (hereinafter, "IRRF"), by and through counsel, Hinshaw & Culbertson LLP, and for its Complaint for Damages states as follows:

PARTIES, CITIZENSHIP, JURISDICTION, AND VENUE

1. IRRF is an Indiana limited liability company, with each of its members domiciled in Lake County, State of Indiana.

2. IRRF is a citizen of the State of Indiana.

3. Earth Management Services of Illinois, Inc. (hereinafter "Earth Management") is an Illinois corporation principally located in Cook County, State of Illinois.

4. Earth Management is a citizen of the State of Illinois.

5. Chicago Heights Land Management, Inc. (hereinafter, "Land Management") is an Illinois corporation principally located in Cook County, State of Illinois.

6. Land Management is a citizen of the State of Illinois.

7. Robert Fox is an individual domiciled in Will County, State of Illinois.

8. Robert Fox is a citizen of the State of Illinois.
9. IRRF is diverse in citizenship from each Defendant.
10. IRRF, by its Complaint for Damages, seeks damages in excess of \$75,000.00.
11. This Court has jurisdiction over this Cause of action pursuant to 28 U.S.C. §1332(a)(2).

FACTUAL BACKGROUND

12. IRRF is an Indiana limited liability company operating as a refuse and recycling servicer and processor.

13. Earth Management and Land Management own certain land located at 1301 State Street, Chicago Heights, Cook County, State of Illinois (the "Real Estate").

14. Earth Management and Land Management operate under the supervision and direction of Robert Fox.

15. IRRF held Certification for Operating a Waste Management Facility at the Real Estate.

16. In preparation to doing business at the Real Estate as recycling processing center, IRRF expended energy, time, funds, and costs.

17. IRRF entered into a contract with Land Management to purchase the Real Estate, a true copy of which is attached hereto, made apart hereof, and incorporated herein as **Exhibit A** (the "First Real Estate Contract").

18. IRRF remitted \$43,000.00 in earnest money according to the terms of the First Real Estate Contract, a copy of which check is attached hereto, made a part hereof, and incorporated herein as **Exhibit B**.

19. Land Management refused or otherwise failed to close on the First Real Estate Contract.

20. Instead, Land Management extended the closing deadline on the First Real Estate Contract in consideration for IRRF's payment of \$50,000.00.

21. IRRF, at the time of filing this Complaint for Damages, cannot locate a copy of the extended real estate agreement (the "Second Real Estate Contract"), but attaches hereto, makes a part hereof, and incorporates herein the check paid to Land Management as **Exhibit C**.

22. Land Management refused or otherwise failed to close on the Second Real Estate Contract.

23. Instead, Land Management extended the closing deadline on the Second Real Estate Contract to December 31, 2015 in consideration for IRRF's payment of \$50,000.00.

24. A copy of the Real Estate Agreement extending the closing deadline and creating additional terms and obligations on IRRF is attached hereto, made a part hereof, and incorporated herein as **Exhibit D** (the "Third Real Estate Contract").

25. A copy of the check paid Land Management under the terms of the Second Real Estate Contract is attached hereto, made a part hereof, and incorporated herein as **Exhibit E**.

26. Land Management refused or otherwise failed to close on the Third Real Estate Contract.

27. Instead, Land Management extended the closing deadline of the Third Real Estate Contract up to and including July 5, 2016, a copy of the written agreement among IRRF and Land Management is attached hereto, made a part hereof, and incorporated herein as **Exhibit F** (the "Fourth Real Estate Contract").

28. IRRF paid Land Management \$50,000.00 in consideration for the extension, proof of which is attached hereto, made a part hereof, and incorporated herein as **Exhibit G**.

29. IRRF demanded the Fourth Real Estate Contract close, but Land Management and Earth Management refuse to honor the Fourth Real Estate Contract.

30. In each instance Land Management refused or otherwise failed to close any real estate contract, Earth Management likewise refused or otherwise failed to facilitate closing of the real estate contracts.

31. Coinciding with the foregoing events, Earth Management and Robert Fox acted in concert to transfer the Certification for Operating a Waste Management Facility originally held by IRRF to its ownership, control, and certification.

32. IRRF never gave authority to transfer the certification to Earth Management.

33. Any transfer purported authorized by IRRF was not executed by an authorized agent of IRRF.

34. Earth Management and Robert Fox knew no authorized person of IRRF approved the transfer of the certification.

35. Notwithstanding, Earth Management and Robert Fox made false statements purporting to act on behalf IRRF to the Illinois Environmental Protection Agency, knowing them to be false, with the intent to induce the Illinois Environmental Protection Agency to act, upon which the Illinois Environmental Protection Agency reasonably relied and caused IRRF to be stripped of its certification and causing it damages.

36. Earth Management and Robert Fox additionally made false threats, knowing the statements to be false when made, with the intent to induce one M.L. Smith to executed certain

documents as purportedly authorized by IRRF, which statement M.L. Smith relied upon to his detriment and that of IRRF causing IRRF damages.

37. Earth Management and Robert Fox's intentional misrepresentations materially interfered with and destroyed certain commitments for business from trash and recycling customers of IRRF who had pledged business with IRRF at the Real Estate.

COUNT I: BREACH OF CONTRACT

38. A valid and enforceable contract existed between Land Management, Earth Management, and IRRF for the sale of the Real Estate.

39. The actions of Land Management and Earth Management as described by this Complaint for Damages constitute a breach of the contract existing between them and IRRF, which breach caused IRRF to suffer damages in an amount not less than \$193,000.00 plus consequential and compensatory damages and attorney's fees

WHEREFORE, Plaintiff, INDIANA RECYCLING & RENEWAL FUELS, LLC d/b/a ILLINOIS RECYCLING & RENEWABLE FUELS, by and through counsel, respectfully requests this Court enter judgment in its favor and against Defendants, jointly and severally, in an amount not less than \$193,000.00 plus consequential and compensatory damages, lost profits, attorney's fees, the costs of this action, and specific performance to transfer the Real Estate.

Respectfully submitted,

HINSHAW & CULBERTSON LLP

By: /s/ John R. Terpstra

John R. Terpstra (27362-64)

Attorneys for Plaintiff, INDIANA

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COUNT II: FRAUD AND TORTIOUS INTERFERENCE WITH BUSINESS INTEREST

40. Earth Management and Robert Fox made false or misleading statements, knowing them to be false (or at least made in reckless disregard of their falsity), with the intent that one would rely on said false statements, upon which persons did rely to the detriment of IRRF.

41. Earth Management and Robert Fox perjured themselves to the Illinois Environmental Protection Agency with the intent to deceive the Illinois Environmental Protection Agency and induce them to act in such a way that stripped IRRF of its Certification for Operating a Waste Management Facility.

42. The Illinois Environmental Protection Agency reasonably relied upon the statements by Earth Management and Robert Fox, inducing it to strip IRRF of its certification.

43. Earth Management and Robert Fox's activity described in this Complaint for Damages prevented IRRF from successfully establishing a business relationship with those who have pledged business to IRRF at the Real Estate.

44. Earth Management's misrepresentations and tortious conduct caused damage to IRRF.

45. Robert Fox's misrepresentations and tortious conduct caused damage to IRRF.

WHEREFORE, Plaintiff, INDIANA RECYCLING & RENEWAL FUELS, LLC d/b/a ILLINOIS RECYCLING & RENEWABLE FUELS, by and through counsel, respectfully requests this Court enter judgment in its favor and against Defendants, jointly and severally, in an amount sufficient to compensate it for its loss, times three, plus attorney's fees and the costs of this action as well as an order that Defendants transfer, or fully cooperate in transferring, the Certification for Operating a Waste Management Facility to IRRF.

Respectfully submitted,

HINSHAW & CULBERTSON LLP

By: /s/ John R. Terpstra

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